

Mr. Robert M. Frank
Excise Tax Unit

April 29, 1988

David H. Levine
Tax Counsel

This is in response to your memorandum dated February 25, 1988 regarding whether the amount of the Universal Telephone Service Surcharge should be included in the measure of the Emergency Telephone Users Surcharge.

The Emergency Surcharge is a tax imposed on service users which is measured by charges for services. (Rev. & Tax. Code §§ 41011, 41013, 41020, 41024.) Section 41011 defines "charges for services" to include all charges billed by a service supplier for intrastate service and to not include any tax imposed by the United States or by any charter city or a charge for basic exchange line service for lifeline services. You ask whether the Universal Surcharge is a charge for service pursuant to section 41011.

Under previous law, universal service was funded by a tax imposed on service suppliers, measured by certain gross revenues excluding taxes. (Rev. & Tax. Code §§ 44024, 44030.) AB 386, Chapter 163 of Stats. 1987, repealed this law and added the Moore Universal Telephone Service Act to the Public Utilities Code (P.U.Code § 871 et seq.). Universal service is now funded by a surcharge to service rates which may be separately identified on customers' bills. (P.U.Code § 879(c).) As we understand this provision, the surcharge can be included in the charge to the customer without being separately identified, or may be separately identified. The surcharge may not be added to charges for universal service.

We note that if the Universal Surcharge were to be included in the measure of the Emergency Surcharge, and vice versa, this would present an administrative problem. However, the Universal Surcharge is set by the PUC and is a surcharge to service rates. (P.U.Code § 879(c).) Although not entirely clear, it appears that the "service rate" is a less encompassing term than "charges for services" and would not include the Emergency Surcharge which is required to be separately stated from the service rate. (Rev. & Tax. Code § 41022.)

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Based on our understanding of the Universal Surcharge, it is not required to be separately stated, but may simply be included in the total amount billed to the customer (presumably the PUC could require they be separately stated, but that does not appear to be statutorily mandated). If the surcharge were not separately stated, it would be difficult to argue it was not a charge for services under section 41011. (This observation is only one consideration; we would reach the same conclusion as set forth below even if the surcharge were separately stated.) Further, section 41011 specifically excludes from the measure of the Emergency Surcharge any tax imposed by the United States or any charter city. Taxes imposed by the state, such as the Universal Surcharge, are not excluded. Based on the discussion herein, we conclude that charges for services as defined by section 41011 includes the amount of the Universal Surcharge since that amount is not excluded from the definition and is actually part of the charge for the relevant services.

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